

B 104 (Rev. 2/92)	ADVERSARY PROCEEDING COVER SHEET (Instructions on Reverse)	ADVERSARY PROCEEDING NUMBER (Court Use Only)
PLAINTIFFS AmTrust Bank		DEFENDANTS Toby Lee Hudson
ATTORNEYS (Firm Name, Address, and Telephone No.) David M. Anthony c/o Smythe & Puryear 144 Second Avenue North, Suite 333 Nashville, Tennessee 37201		ATTORNEYS (If Known) Howard G. Pick PO Box 3285 Crossville, Tennessee 38557
PARTY (Check one box only) <input type="checkbox"/> 1 U.S. PLAINTIFF <input type="checkbox"/> 2 U.S. DEFENDANT <input checked="" type="checkbox"/> 3 U.S. NOT A PARTY		
CAUSE OF ACTION (WRITE A BRIEF STATEMENT OF CAUSE OF ACTION, INCLUDING ALL U.S. STATUTES INVOLVED) Action to Object to Dischargeability of Debt under 11 U.S.C. Sec. 523		
NATURE OF SUIT (Check the one most appropriate box only.)		
<div style="display: flex; flex-wrap: wrap;"> <div style="width: 33%;"> <input type="checkbox"/> 454 To Recover Money or Property <input type="checkbox"/> 435 To Determine Validity, Priority, or Extent of a Lien or Other Interest in Property <input type="checkbox"/> 458 To obtain approval for the sale of both the interest of the estate and of a co-owner in property <input type="checkbox"/> 424 To object or to revoke a discharge 11 U.S.C. § 727 </div> <div style="width: 33%;"> <input type="checkbox"/> 455 To revoke an order of confirmation of a Chap. 11, Chap. 12, or Chap. 13 Plan <input checked="" type="checkbox"/> 426 To determine the dischargeability of a debt 11 U.S.C. § 523 <input type="checkbox"/> 434 To obtain an injunction or other equitable relief <input type="checkbox"/> 457 To subordinate any allowed claim or interest except where such subordination is provided in a plan </div> <div style="width: 33%;"> <input type="checkbox"/> 456 To obtain a declaratory judgment relating to any of foregoing causes of action <input type="checkbox"/> 459 To determine a claim or cause of action removed to a bankruptcy court <input type="checkbox"/> 498 Other (specify) </div> </div>		
ORIGIN OF PROCEEDINGS (Check one box only)		<input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed Proceeding <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from Another Bankruptcy Court
<input type="checkbox"/> CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23		
DEMAND \$ 40,000.00	OTHER RELIEF SOUGHT	
BANKRUPTCY CASE IN WHICH THIS ADVERSARY PROCEEDING ARISES		
NAME OF DEBTOR Toby Lee Hudson		BANKRUPTCY CASE NO. 205-05365-MH2-7
DISTRICT IN WHICH CASE IS PENDING Middle	DIVISIONAL OFFICE Cookeville	NAME OF JUDGE Harrison
RELATED ADVERSARY PROCEEDING (IF ANY)		
PLAINTIFF	DEFENDANT	ADVERSARY PROCEEDING NO.
DISTRICT	DIVISIONAL OFFICE	NAME OF JUDGE
FILING FEE (Check one box only) <input type="checkbox"/> FEE ATTACHED <input type="checkbox"/> FEE NOT REQUIRED <input type="checkbox"/> FEE IS DEFERRED		
DATE	PRINT NAME	SIGNATURE OF ATTORNEY (OR PLAINTIFF)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
COOKEVILLE DIVISION**

IN RE:)	
)	
TOBY LEE HUDSON,)	Case No. 205-05365-MH2-7
)	Chapter 7
Debtor.)	Judge Harrison
_____)	
)	
AMTRUST BANK,)	
)	
Plaintiff,)	U.S. Bankr. Adv. Case No. _____
)	
v.)	
)	
TOBY LEE HUDSON)	
)	
Defendant.)	

**COMPLAINT OBJECTING TO DISCHARGEABILITY
OF DEBT**

Comes now the Plaintiff, AmTrust Bank, pursuant to 11 U.S.C. § 523, and respectfully states as follows:

I. PARTIES

1. Plaintiff, AmTrust Bank (hereinafter "Plaintiff") is a corporation authorized to do business in Tennessee.

2. Defendant, Toby Lee Hudson (hereinafter "Hudson"), is an individual, a resident of Tennessee, and is the Debtor in the above-captioned bankruptcy proceeding.

II. JURISDICTION

3. This adversary proceeding is one arising in the above-captioned Chapter 7 proceeding by Hudson.

4. This Court has jurisdiction over this adversary proceeding, pursuant to 28 U.S.C. § 1334 and 11 U.S.C. § 523.

5. Venue is proper under 28 U.S.C. § 1409(a).

6. This is a core proceeding under 28 U.S.C. § 157(b)(2), including, without limitation, subsection(I).

7. This action is filed within the time permitted by applicable law.

III. FACTUAL BASIS FOR CLAIM FOR RELIEF

8. The basis of the debt owed by Hudson to Plaintiff is a certain Retail Installment and Security Agreement, dated February 28, 2005 (the "Note"). A copy of the Note is attached as **Exhibit 1**.

9. As part of his credit application for the Note, Hudson represented that, as of the time of the credit application, his income from his employment was \$53,500.00 gross annually. A copy of the Credit Application is attached as **Exhibit 2**.

10. On his Schedule I of his Bankruptcy Petition, however, Hudson listed his monthly gross wages as \$2,491.66, which is approximately \$29,899.92.

11. At the time of making the Credit Application, Hudson knew that his income had significantly decreased and that his statements on the Credit Application were materially false.

12. In fact, it was only little over two months after entering into the Note that Hudson filed his Chapter 7 Bankruptcy Petition on May 3, 2005.

13. Plaintiff reasonably relied on the statements made by Hudson on the Credit Application, particularly his statement regarding his annual income.

14. Hudson's statement regarding his annual income was materially false when it was made, and Hudson made the statement with intent that Plaintiff would be deceived and rely on it in order to extend credit to him.

15. As of the filing of this Bankruptcy case, \$40,758.57 remains due and owing under the Note.

V. SUMMARY OF GROUNDS FOR RELIEF

16. Pursuant to 11 U.S.C. § 523(a)(2)(B), a discharge under 11 U.S.C. § 727 does not discharge a debtor from any debt for "money...to the extent obtained by...use of a statement in writing...that is materially false...respecting the debtor's or an insider's financial condition...on which the creditor to whom the debtor is liable for such money, property, services, or credit reasonably relied; and...that the Debtor caused to be made or published with intent to deceive."

17. By signing the Credit Application and affirming that all of the information contained therein as true and accurate, Hudson intentionally used a statement in writing that was materially false regarding his financial condition on which Plaintiff reasonably relied, and Hudson's liability for the debt under the Note should not be discharged in this Bankruptcy case.

VI. RELIEF REQUESTED

WHEREFORE, premises considered, Plaintiff respectfully prays for the following relief:

1. That Hudson be denied a discharge as allowed under 11 U.S.C. § 523(a)(2) or any other applicable provision, as to all amounts herein described and owing to Plaintiff;
2. That the costs of this matter be taxed to Hudson; and
3. For such other and further relief as this Court shall deem appropriate.

Respectfully submitted,

/s/ David M. Anthony

David M. Anthony; No. 19951

David M. Smythe; No. 10114

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(615) 255-4849

Attorneys for AmTrust Bank

RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT No. _____ Date 02/28/2005	Seller HERITAGE FORD LINCOLN-MERC, INC 1115 EAST SPRING STREET COOKEVILLE TN 38501 "We" and "us" mean the Seller above, its successors and assigns.	Buyer TOBY L HUDSON 800 E. SPRING ST APT 0-2 COOKEVILLE TN 38501 "You" and "your" mean each Buyer above, and guarantor, jointly and individually.
--	--	--

SALE: You agree to purchase from us, on a time basis, subject to the terms and conditions of this contract and security agreement (Contract), the Motor Vehicle (Vehicle) and services described below. The Vehicle is sold in its present condition, together with the usual accessories and attachments.

Description of	Year	2004	VIN	JN1AZ36DX4T100121	Off	0100003151
Motor Vehicle	Make	NISSAN	Lic No./Year			Toby L. Hudson
Purchased	Model	350Z	<input type="checkbox"/> New <input checked="" type="checkbox"/> Used			

Description of Trade-In **2002 DODGE TRUCK QUAD CAB 1D7HU18Z6S667832**

SECURITY: To secure your payment and performance under the terms of this Contract, you give us a security interest in the Vehicle, all accessions, attachments, accessories, and equipment placed in or on the Vehicle, together called Property, and proceeds of the Property. You also assign to us and give us a security interest in proceeds and premium refunds of any insurance and service contracts purchased with this Contract. **39205.70**

PROMISE TO PAY AND PAYMENT TERMS: You promise to pay us the principal amount of \$ _____ plus a time price differential accruing on the unpaid balance at the rate of **6.79** % per year from today's date until maturity. The time price differential accrues on a **365** day basis. After maturity, or after you default and we demand payment, we will earn finance charges on the unpaid balance at **6.79** % per year. You agree to pay this Contract according to the payment schedule and late charge provisions shown in the TRUTH IN LENDING DISCLOSURES. You also agree to pay any additional amounts according to the terms and conditions of this Contract.

☒ **MINIMUM FINANCE CHARGE:** You agree to pay a minimum time price differential of \$ **N/A** if you pay this Contract in full before we have earned that much in finance charges.

☒ **ADDITIONAL FEES:** You agree to pay the following additional fee(s): ☒ A nonrefundable Document Preparation Fee of \$ **289.00**. ☐ An additional ☐ refundable ☐ nonrefundable fee of \$ **N/A**. These fees will be ☐ paid in cash. ☐ added to the Cash Price. ☐ paid proportionally with each payment.

DOWN PAYMENT: You also agree to pay, or apply to the Cash Price, on or before today's date, any cash, rebate and net trade-in value described in the ITEMIZATION OF AMOUNT FINANCED. ☐ You agree to make deferred payments as part of the cash down payment as reflected in your Payment Schedule.

TRUTH IN LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you	AMOUNT FINANCED The amount of credit provided to you or on your behalf.	TOTAL OF PAYMENTS The amount you will have paid when you have made all scheduled payments.	TOTAL SALE PRICE The total cost of your purchase on credit, including your down payment of
6.79 %	\$ 8644.06	\$ 39205.70	\$ 47849.76	\$ 56038.29

Payment Schedule: Your payment schedule will be

Number of Payments	Amount of Payments	When Payments Are Due
72	664.58	MONTHLY BEGINNING 03/30/2005

Security: You are giving a security interest in the Motor Vehicle purchased.

Late Charge: If a payment is more than 10 days late, you will be charged a late charge of 5% of the payment due. *or \$30⁰⁰ which ever is less*

Prepayment: If you pay off this Contract early, you ☐ may ☒ will not have to pay a Minimum Finance Charge.

☒ If you pay off this Contract early, you ☐ may ☒ will not be entitled to a refund of part of the Finance Charge.

Contract Provisions: You can see the terms of this Contract for any additional information about nonpayment, default, any required repayment before the scheduled date, and prepayment refunds and penalties.

CREDIT INSURANCE: Credit life, credit disability (accident and health), and any other insurance coverage quoted below, are not required to obtain credit and we will not provide them unless you sign and agree to pay the additional premium. If you want such insurance, we will obtain it for you (if you qualify for coverage). We are quoting below ONLY the coverages you have chosen to purchase.

Credit Life: Insured ☐ Single ☐ Joint Prem. \$ **N/A** Term _____

Credit Disability: Insured ☐ Single ☐ Joint Prem. \$ **N/A** Term _____

ITEMIZATION OF AMOUNT FINANCED

Vehicle Price (incl. sales tax of \$ **1091.12**) \$ **46361.23**
 Service Contract. Paid to: _____ \$ **330.00**
 Cash Price \$ **46691.23**
 Manufacturer's Rebate \$ **N/A**
 Cash Down Payment \$ **2500.00**
 Deferred Down Payment \$ **N/A**
 a. Total Cash/Rebate Down \$ **2500.00**
 b. Trade-In Allowance \$ **32500.00**
 c. Less: Amount owing \$ **26811.47**
 Paid to (includes f.): **FIFTH THIRD BANK**
 d. Net Trade-In (b. minus c.) \$ **5688.53**
 e. Net Cash/Trade-In (a. plus d.) \$ **8188.53**

Your signature below means you w

EXHIBIT

coverage(s) quoted above. If none are quoted, you have declined any coverages we offered.

Buyer d/o/b Buyer d/o/b

PROPERTY INSURANCE: You must insure the Property securing this Contract. You may purchase or provide the insurance through any insurance company reasonably acceptable to us. The collision coverage deductible may not exceed \$ 500.00. If you get insurance from or through us you will pay \$ N/A for _____ of coverage.

This premium is calculated as follows:

- ☐ \$ N Deductible, Collision Coverage \$ N/A
☐ \$ N Deductible, Comprehensive Cov. \$ N/A
☐ Fire-Theft and Combined Additional Coverage \$ N/A
☐ \$ N/A

Liability insurance coverage for bodily injury and motor vehicle damage caused to others is not included in this Contract unless checked and indicated.

☐ **SINGLE-INTEREST INSURANCE:** You must purchase single-interest insurance as part of this sale transaction. You may purchase the coverage from a company of your choice, reasonably acceptable to us. If you buy the coverage from or through us, you will pay \$ N/A for _____ of coverage.

☒ **SERVICE CONTRACT:** With your purchase of the Vehicle, you agree to purchase a Service Contract to cover _____
2004 NISSAN 350Z This Service Contract will be in effect for _____

ASSIGNMENT: This Contract and Security Agreement is assigned to AMTRUST BANK, the Assignee, phone 800-711-4950. This assignment is made ☐ under the terms of a separate agreement ☒ under the terms of the ASSIGNMENT BY SELLER on page 2. ☐ This assignment is made with recourse.
Seller: By [Signature] Date 02/28/2005

EXPRESS
TENNESSEE RETAIL INSTALLMENT CONTRACT AND SECURITY AGREEMENT
© 1992-1995 Bankers Systems, Inc. St. Cloud, MN Form RSSIMVLF-TN 2/24/2004

f. Amount to Finance line e. (If e. is negative, Down Payment (e.; disclose as \$0 if negative) \$ 8188.53
Unpaid Balance of Cash Price \$ 38502.70
Paid to Public Officials - Filing Fees \$ 24.00
Document Preparation Fee Paid to Seller \$ 289.00
Insurance Premiums* \$ N/A
To: TMA/GAP \$ 390.00
To: _____ \$ N/A
To: _____ \$ N/A
To: _____ \$ N/A
Total Other Charges/Amounts Pd. to Others \$ 703.00
Less: Prepaid Finance Charges \$ N/A
Amount Financed \$ 39205.70

*We may retain or receive a portion of this amount.

NOTICE TO BUYER

(1) Do not sign this agreement before you read it or if it contains any blank spaces. (2) You are entitled to a completely filled-in copy of this agreement. (3) Under the law, you have the right to pay off in advance the full amount due and under certain conditions to obtain a partial refund of the finance charge.

BY SIGNING BELOW BUYER AGREES TO THE TERMS ON PAGES 1 AND 2 OF THIS CONTRACT AND ACKNOWLEDGES RECEIPT OF A COPY OF THIS CONTRACT.

The Annual Percentage Rate may be negotiable with the Seller. The Seller may assign this Contract and retain its right to receive a part of the Finance Charge. 02/28/2005

Buyer:

Signature

Date

Signature

Date

Seller: By

(page 1 of 2)

MOTOR VEHICLE - NOT FOR MANUFACTURED HOMES

HERITAGE
FORD LINCOLN MERCURY

DEALER NAME

DEALER NUMBER

<input type="checkbox"/> INDIVIDUAL APPLICATION		<input type="checkbox"/> JOINT APPLICATION		(MARKED MAY APPLY AS AN INDIVIDUAL)	
APPLICANT				JOINT APPLICANT	
(PRINCIPAL DRIVER OF VEHICLE)				RELATIONSHIP	
FULL NAME	FIRST	NO.	LAST	FULL NAME	FIRST
DATE OF BIRTH	AGE	SOCIAL SECURITY NUMBER		DATE OF BIRTH	AGE
STREET ADDRESS	APT#	HOW LONG?	STREET ADDRESS	APT#	HOW LONG?
CITY	STATE	ZIP	CITY	STATE	ZIP
PREVIOUS ADDRESS	HOW LONG?	PREVIOUS ADDRESS	HOW LONG?		
OWNERSHIP	LIVE WITH RELATIVE	MONTHLY PAYMENT	OWNERSHIP	LIVE WITH RELATIVE	MONTHLY PAYMENT
MORTGAGE COMPANY OR LANDLORD	MORTGAGE AMOUNT	MORTGAGE COMPANY OR LANDLORD	MORTGAGE AMOUNT		
BANK NAME	BRANCH	CHECKING ACCTS	BANK NAME	BRANCH	CHECKING ACCTS
BANK NAME	BRANCH	SAVINGS ACCTS	BANK NAME	BRANCH	SAVINGS ACCTS

EMPLOYER NAME	HOW LONG?	EMPLOYER NAME	HOW LONG?
EMPLOYER ADDRESS		EMPLOYER ADDRESS	
POSITION / TITLE	WORK PHONE	POSITION / TITLE	WORK PHONE
GROSS ANNUAL SALARY	ANNUAL AMOUNT	GROSS ANNUAL SALARY	ANNUAL AMOUNT
OTHER INCOME SOURCE	PREVIOUS EMPLOYER OR SCHOOL	OTHER INCOME SOURCE	PREVIOUS EMPLOYER OR SCHOOL

AUTO CREDIT REFERENCE	YES	NO	BALANCE	AUTO CREDIT REFERENCE	YES	NO	BALANCE
OTHER CREDIT REFERENCE				OTHER CREDIT REFERENCE			
NEAREST RELATIVE (NOT LIVING WITH YOU)	RELATIONSHIP	NEAREST RELATIVE (NOT LIVING WITH YOU)	RELATIONSHIP				
ADDRESS	PHONE	ADDRESS	PHONE				
FRIEND OR RELATIVE	PHONE	FRIEND OR RELATIVE	PHONE				

NOTICE: THE APPLICANT HAS THE RESPONSIBILITY TO NOTIFY HFD WITHIN A REASONABLE TIME OF ANY CHANGE IN THE APPLICANT'S NAME, ADDRESS, OR EMPLOYMENT. INFORMATION RELATED TO THIS CREDIT FOR WHICH YOU ARE APPLYING MAY BE PURCHASED FROM AN AGENCY OR AGENCY OF YOUR CHOICE. WE STRONGLY ADVISE THAT YOU SHOULD NOT PURCHASE ANY INFORMATION FROM ANY AGENCY OR AGENCY OF YOUR CHOICE WITHOUT FIRST ASKING US FOR A LIST OF AGENCIES TO CONTACT. WE WILL ADVISE YOU IF THE REPORT WAS ACTUALLY ORDERED AND IF SO THE NAME AND ADDRESS OF THE AGENCY THAT ORDERED IT.

SIGNATURE OF APPLICANT DATE SIGNATURE OF JOINT APPLICANT DATE

PROPOSED FINANCING TERMS		VEHICLE DESCRIPTION	
SALES PRICE	LEASE	VIN	TRADE IN:
DOWN PAYMENT	GROSS CAP	NEW	
KEY TRADE	REDUCTION	USED	
AMT FINANCED	ADJUSTED CAP	DEBO	
PROGRAM	BIOP	YEAR	
	PROGRAM	MAKE	
	PAYMENT	MODEL	
	TERM	BOOK VALUE	
		RELEASE	

PLEASE CHECK IF APPLICABLE

MILEAGE (ADD/DEDUCT)		LUGGAGE RACK	\$
CAPT CHAIRS (2)	\$	RUNNING BOARDS	\$
CAPT CHAIRS (4)	\$	ALLOYS	\$
PWR DOOR LOCKS	\$	C.D.	\$
PWR WINDOWS	\$	TOW PKGE	\$
TILT STEERING WHL	\$	ANTI-THEFT	\$
CRUISE CONTROL	\$	STAKE BODY	\$
AUTOMATIC TRANS	\$	4 WHEEL DRIVE	\$
AUX FUEL TANK	\$	OTHER	\$
ROLL BARS	\$	OTHER	\$
BEDLINER	\$	OTHER	\$

EXHIBIT